

House Bill 719

By: Representatives Forster of the 3rd, Coan of the 101st, Pruett of the 144th, and Drenner of the 86th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to add a new chapter; to provide for legislative intent; to provide for
3 definitions; to create a Division of Occupational Safety and Health; to provide for a director;
4 to create a council; to provide for powers and duties; to provide for notice requirements; to
5 provide for procedures for variances and temporary variances; to provide for an appeals
6 procedure for aggrieved persons; to provide for violations and penalties; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
11 is amended by adding a new chapter to read as follows:

12 "CHAPTER 2A

13 34-2A-1.

14 The General Assembly finds as a matter of public policy the need to more efficiently
15 regulate safety and health in the workplace. In an effort to make workplaces in Georgia
16 as safe as possible, the General Assembly authorizes the creation of a division within the
17 Department of Labor whose purpose shall be to investigate and enforce the occupational
18 safety and health regulations of the State of Georgia. The division created pursuant to this
19 chapter shall act under the supervision and guidance of the Georgia Department of Labor.
20 This chapter shall not become effective until a state plan has been approved by the United
21 States Department of Labor.

34-2A-2.

As used in this chapter, the term:

(1) 'Commissioner' means the Commissioner of Labor.

(2) 'Council' means the Occupational Safety and Health Advisory Council.

(3) 'Department' means the Department of Labor created pursuant to Code Section 34-2-1.

(4) 'Director' means the director of the Division of Occupational Safety and Health or any person authorized by the Commissioner or director to act on the director's behalf.

(5) 'Division' means the Division of Occupational Safety and Health created pursuant to Code Section 34-2A-3.

(6) 'Superior court' or 'superior courts' means a court created pursuant to Article 1 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated.

34-2A-3.

(a) There is created within the Department of Labor a Division of Occupational Safety and Health.

(b)(1) The division shall have a director who shall be both appointed and removed by the Commissioner. The director shall appoint an assistant director of the division. The director and the assistant director shall be qualified professionals, competent in the field of occupational safety and health. In the event of a vacancy in the office of the director or in the director's absence or disability, the assistant director shall perform all the duties of the director. The director shall be responsible for enforcing the occupational safety and health laws of Georgia. The director shall hire the personnel for the division and shall supervise, direct, account for, organize, plan, and execute the functions vested in the division.

(2)(A) The Governor shall appoint an Occupational Safety and Health Advisory Council. The council shall consist of nine members who shall be representative of professional and lay individuals, organizations, and governmental agencies associated or involved with occupational safety and health matters. The term of each member of the council shall be for two years, provided that of the members first appointed, five shall be appointed for terms of one year and four for terms of two years. Vacancies shall be filled by similar appointment for unexpired terms.

(B) The council shall advise the Governor, the Commissioner, and the director as to the efficacy of the state's occupational safety and health programs, the need for legislation relating to occupational safety and health, the need for expansion or reduction of specific occupational safety and health programs, and the need for specific changes in the state's occupational safety and health programs. The council may

1 review and prepare written comments on proposed state plans and on standards, rules,
2 and regulations proposed by the division. Such comments may be submitted to the
3 director, the Commissioner, and any other individual or agency deemed appropriate.

4 (C) Members of the council shall serve without compensation but shall receive the
5 same expense allowance as that received by members of the General Assembly and the
6 same mileage allowance for the use of a personal car or a travel allowance of actual
7 transportation cost if traveling by public carrier as that received by all other state
8 officials and employees.

9 34-2A-4.

10 The director may promulgate, modify, or revoke rules and regulations for the purposes of
11 attaining the highest degree of safety and health protection for any and all employees
12 working within the State of Georgia, whether employed in the public or private sector.

13 34-2A-5.

14 (a) Before the promulgation, modification, or revocation of a regulation issued pursuant
15 to this chapter, the director shall meet all notice and procedure requirements set out in
16 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

17 (b) After promulgation, modification, or revocation of a regulation, notice shall be given
18 to the Secretary of State's office for the purposes of publication pursuant to Code Section
19 50-13-7.

20 34-2A-6.

21 (a) Any affected employer may apply to the director for a temporary permit granting a
22 variance from a rule or regulation or any provision thereof promulgated under this chapter.
23 Affected employees shall be given notice by the employer of each such application and
24 shall be furnished an opportunity to participate in any hearing which shall be directed at
25 the request of the employer or by the director on his or her own motion. Such temporary
26 permit shall be granted at the discretion of the director if sufficient evidence establishes
27 that the applicant:

28 (1) Is unable to comply with a rule or regulation by its effective date because of
29 unavailability of professional or technical personnel or of materials and equipment
30 needed to comply with the rule or regulation or because necessary construction or
31 alteration of facilities cannot be completed by the effective date;

32 (2) Is taking all available steps to safeguard his or her employees against the hazard
33 covered by the rule or regulation; or

(3) Has an effective program for complying with the rule or regulation as quickly as practicable.

Any temporary permit issued under this Code section shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the permit is in effect and state in detail his or her program for complying with the rule or regulation.

(b) No temporary permit shall be in effect for longer than the period needed by the employer to achieve compliance with the rule or regulation or for one year, whichever is shorter, except that such an order may be renewed not more than twice if:

(1) The requirements of this Code section are being met; and

(2) An application for a renewal is filed at least 90 days prior to the expiration date of the order.

(c) The form of application for a temporary permit shall be as prescribed by the Commissioner.

34-2A-7.

Any affected employer may apply to the director for a permit for a permanent variance from a rule or regulation promulgated under this chapter. Affected employees and their bargaining representative, if any, shall be given notice by the employer of each such application and shall be furnished an opportunity to participate in a hearing. The director shall issue such permit if he or she determines on the record, after opportunity for an inspection where applicable and a hearing, that the proponent of a variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his or her employees which are as safe and healthy as those which would prevail if he or she complied with the rule or regulation. The permit so issued shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes which he or she must adopt and utilize to the extent they differ from the rule or regulation in question. Such a permit may be revoked or modified upon application by an employer, employee, or the director on his or her own motion, in the manner prescribed for its issuance under this Code section at any time after six months from its issuance.

34-2A-8.

(a) The director or his or her inspectors, compliance officers, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, shall enter at reasonable times and have the right to question, either publicly or privately, any

1 such employer, owner, manager, agent, or the employees of the employer and inspect,
2 investigate, reproduce, photograph, and sample all pertinent places, sites, areas, work injury
3 records, and such other records during regular working hours and at other reasonable times,
4 within reasonable limits, and in a reasonable manner when such comes under the
5 jurisdiction of the director to enforce the occupational safety and health provisions of this
6 title.

7 (b) If an inspector is denied admission for purposes of inspection, the director may seek
8 a warrant as follows:

9 (1) The director or any person authorized to make inspections for the division shall make
10 application for an inspection warrant to a person who is a judicial officer within the
11 meaning of Code Section 17-5-21;

12 (2) An inspection warrant shall be issued only upon cause and when supported by an
13 affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be
14 inspected and the purpose for which the inspection is to be made. In addition, the
15 affidavit shall contain either a statement that consent to inspect has been sought and
16 refused or facts or circumstances reasonably justifying the failure to seek such consent.
17 Cause shall be deemed to exist if either reasonable legislative or administrative standards
18 for conducting a routine or area inspection are satisfied with respect to the particular
19 place, dwelling, structure, premises, or vehicle, or there is reason to believe that a
20 condition of nonconformity exists with respect to the particular place, dwelling, structure,
21 premises, or vehicle;

22 (3) An inspection warrant shall be effective for the time specified therein, but not for a
23 period of more than 14 days, unless extended or renewed by the judicial officer who
24 signed and issued the original warrant, upon satisfying himself or herself that such
25 extension or renewal is in the public interest. Such inspection warrant must be executed
26 and returned to the judicial officer by whom it was issued within the time specified in the
27 warrant or within the extended or renewed time. After the expiration of such time, the
28 warrant, unless executed, is void;

29 (4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M.
30 and 6:00 P.M. of any day or at any time during operating or regular business hours. An
31 inspection should not be performed in the absence of an owner or occupant of the
32 particular place, dwelling, structure, premises, or vehicle unless specifically authorized
33 by the judicial officer upon a showing that such authority is reasonably necessary to
34 effectuate the purpose of the regulation being enforced. An inspection pursuant to a
35 warrant shall not be made by means of forcible entry, except that the judicial officer may
36 expressly authorize a forcible entry where facts are shown which are sufficient to create
37 a reasonable suspicion of a violation of this chapter, which, if such violation existed,

1 would be an immediate threat to safety or health, or where facts are shown establishing
2 that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior
3 consent has been sought and refused and a warrant has been issued, the warrant may be
4 executed without further notice to the owner or occupant of the particular place, dwelling,
5 structure, premises, or vehicle to be inspected;

6 (5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an
7 inspection warrant issued as provided in this subsection. Any person violating this
8 paragraph shall be guilty of a misdemeanor;

9 (6) Under this subsection, an inspection warrant is an order, in writing, signed by a
10 judicial officer, directed to the director or any person authorized to make inspections for
11 the division, and commanding him or her to conduct any inspection required or
12 authorized by this chapter or regulations promulgated pursuant to this chapter; and

13 (7) Nothing in this subsection shall be construed to require an inspection warrant when
14 a warrantless inspection is authorized by law or a permit issued under this chapter.

15 34-2A-9.

16 The director may subpoena witnesses and documents, take and preserve testimony,
17 examine witnesses, administer oaths, and, upon proper presentation of credentials to the
18 owner, manager, or agent of the employer, enter any place, site, or area where employment
19 comes under the jurisdiction of the Commissioner and interrogate any person employed
20 therein or connected therewith or the proper officers of a corporation or employer; or the
21 director may file a written or printed list of interrogatories and require full and complete
22 answers to them to be returned under oath within 15 days of the receipt of such list.

23 34-2A-10.

24 If, upon inspection or investigation, the director or his or her authorized representative
25 ascertains that an employer has violated a requirement of any rule or regulation
26 promulgated pursuant to this chapter, he or she shall with reasonable promptness issue a
27 citation to the employer. Each citation shall be in writing and shall describe with
28 particularity the nature of the violation or violations, including a reference to any statute
29 or rule or regulation alleged to have been violated. The citation shall fix a reasonable time
30 for the abatement of the violation. The Commissioner may prescribe procedures for the
31 issuance of a notice in lieu of a citation with respect to de minimis violations which have
32 no direct or immediate relationship to safety or health. Such notice shall have the effect
33 of a recommendation to the employer; compliance shall not be required. Each citation
34 issued under this Code section, or a copy or copies thereof, shall be prominently posted,
35 as prescribed in regulations issued by the Commissioner, at or near each place a violation

1 referred to in the citation occurred. No citation may be issued under this Code section after
2 the expiration of six months following the occurrence of any violation.

3 34-2A-11.

4 (a) The superior court of the county where the place of employment is located shall have
5 jurisdiction, upon petition of the director, to restrain any conditions or practices in any
6 place of employment which are such that a danger exists which could reasonably be
7 expected to cause death or serious physical harm immediately or before the imminence of
8 such danger can be eliminated through the enforcement procedures provided by law. Any
9 order issued under this Code section may require such steps to be taken as may be
10 necessary to avoid, correct, or remove such imminent danger and prohibit the employment
11 or presence of any individual in locations or under conditions where such imminent danger
12 exists, except individuals whose presence is necessary to avoid, correct, or remove such
13 imminent danger or to maintain the capacity of a continuous process to resume normal
14 operations without a complete cessation of operations, or where a cessation of operations
15 is necessary to permit such to be accomplished in a safe and orderly manner.

16 (b) Upon the filing of any such petition, the superior court shall have jurisdiction to grant
17 such injunctive relief or temporary restraining order pending the outcome of an
18 enforcement proceeding pursuant to law.

19 (c) Whenever and as soon as a safety specialist concludes that conditions or practices
20 identified pursuant to subsection (a) of this Code section exist in any place of employment,
21 such specialist shall inform the affected employees and employers of the danger and of his
22 or her recommendation to the director that relief be sought.

23 (d) If the director, or his or her authorized representative, arbitrarily or capriciously fails
24 to seek relief under this Code section, any employee injured or aggrieved by reason of such
25 failure may bring an action, personally or by a representative, against the director in the
26 superior court for the circuit in which the imminent danger is alleged to exist, the employer
27 has its principal office, or an affected employee resides, for a writ of mandamus to compel
28 the director to seek such an order and for such further relief as may be appropriate.

29 34-2A-12.

30 (a) Any person aggrieved or adversely affected by any order or action of the director shall,
31 upon petition to the director within 30 days after the issuance of such order or the taking
32 of such action, have a right to a hearing before an administrative law judge of the Office
33 of State Administrative Hearings assigned under Code Section 50-13-40. The hearing
34 before the administrative law judge shall be conducted in accordance with Chapter 13 of

1 Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted
2 by the board pursuant thereto.

3 (b) In any case involving the grant of a permit, permit amendment, or variance by the
4 director, the filing of such a petition by a person to whom such order or action is not
5 directed shall stay such order or action until such time as the hearing has been held and for
6 ten days after the administrative law judge renders his or her decision on the matter. The
7 petition shall be transmitted to the administrative law judge not more than seven days after
8 the date of filing. The provisions of subsection (c) of Code Section 50-13-41
9 notwithstanding, the hearing shall be held and the decision of the administrative law judge
10 shall be rendered not later than 90 days after the date of the filing of the petition by such
11 a person unless such period is extended for a time certain by order of the administrative law
12 judge upon consent of all parties; in addition, the administrative law judge may extend the
13 90 day period for good cause shown for a period not to exceed an additional 60 days.

14 (c) The decision of the administrative law judge shall constitute the final decision of the
15 board and any party to the hearing, including the director, shall have the right of judicial
16 review thereof in accordance with Chapter 13 of Title 50.

17 (d) Persons are 'aggrieved or adversely affected' where the challenged action has caused
18 or will cause them injury in fact and where the injury is to an interest within the zone of
19 interests to be protected or regulated by the statutes that the director is empowered to
20 administer and enforce. In the event the director asserts in response to the petition before
21 the administrative law judge that the petitioner is not aggrieved or adversely affected, the
22 administrative law judge shall take evidence and hear arguments on this issue and
23 thereafter make a ruling on this issue before continuing with the hearing. The burden of
24 going forward with evidence on this issue shall rest with the petitioner.

25 34-2A-13.

26 (a) For the purposes of this Code section:

27 (1) An occupational safety or health rule or regulation shall be deemed to be a rule or
28 regulation promulgated by the director pursuant to Code Section 34-2A-2 which requires
29 conditions, or the adoption or use of one or more practices, means, methods, operations,
30 or processes, necessary or appropriate to provide safe or healthy employment and places
31 of employment; and

32 (2) A serious violation shall be deemed to exist in a place of employment if there is a
33 substantial probability that death or serious physical harm could result from a condition
34 which exists, or from one or more practices, means, methods, operations, or processes
35 which have been adopted or are in use, in such place of employment unless the employer

1 did not, and could not with the exercise of reasonable diligence, know of the presence of
2 the violation.

3 (b) Any employer who willfully or repeatedly violates any occupational safety or health
4 rule or regulation promulgated pursuant to this chapter may be assessed a civil penalty of
5 not more than \$70,000.00 for each violation.

6 (c) If any employer has received a citation for a violation of an occupational safety or
7 health rule or regulation promulgated pursuant to this chapter, and such violation is
8 specifically determined by the director to be of a serious nature, such employer may be
9 assessed a civil penalty of up to \$15,000.00 for each such violation.

10 (d) If any employer has received a citation for a violation of an occupational safety or
11 health rule or regulation or order promulgated pursuant to this chapter, and such violation
12 is specifically determined not to be of a serious nature, such employer may be assessed a
13 civil penalty of up to \$7,000.00 for each such violation.

14 (e) Any employer who fails to correct a violation for which a citation has been issued
15 under Code Section 34-2A-9 within the period permitted for its correction (which period
16 shall not begin to run until the date of the final order of the Commissioner in the case of
17 any review proceeding initiated by the employer in good faith and not solely for delay or
18 avoidance of penalties) may be assessed a civil penalty of not more than \$7,000.00 for each
19 day during which such failure or violation continues.

20 (f) Any employer whose willful violation of any occupational safety or health rule or
21 regulation promulgated pursuant to this chapter causes death to any employee shall be
22 deemed guilty of a misdemeanor of a high and aggravated nature and shall be punished by
23 imprisonment for not more than six months, by a fine of not more than \$10,000.00, or by
24 both; except that if the conviction is for a violation committed after a first conviction of
25 such person, punishment shall be a fine of not more than \$20,000.00, imprisonment for not
26 more than one year, or both.

27 (g) Any employer who violates any of the posting requirements, as prescribed under Code
28 Section 34-2A-10, may be assessed a civil penalty of up to \$7,000.00 for each violation.

29 (h) Any person who gives advance notice of any inspection to be conducted under this
30 chapter, without authority from the director, shall be deemed guilty of a misdemeanor and
31 upon conviction shall be punished by a fine of not more than \$1,000.00, by imprisonment
32 for not more than six months, or by both.

33 (i) Whoever knowingly makes any false statement, representation, or certification in any
34 application, record, report, plan, or other document filed or required to be maintained
35 pursuant to this chapter shall be deemed guilty of a misdemeanor and upon conviction shall
36 be punished by a fine of not more than \$10,000.00, by imprisonment for not more than six
37 months, or by both.

(j) Except for subsections (f), (h), and (i) of this Code section, establishing a misdemeanor over which the state courts have jurisdiction, all penalty assessments shall be made by the Commissioner.

(k) Any amounts collected under this Code section shall be turned over to the state for deposit into the general fund of the state treasury.

34-2A-14.

In each case where the penalty is not paid within 30 days of the director issuing a citation, the Attorney General shall bring an action against the assessed employer. Any amounts collected shall be deposited into the general fund of the state treasury.

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.